
NATURAL RESOURCES COMMISSION**Information Bulletin #20 (Fifth Amendment)
May 24, 2017**

SUBJECT: Ratemaking Process for Resorts and Marinas under Lease with the Department of Natural Resources

1. Purpose

The purpose of this information bulletin is to implement an informal process for the administrative review of ratemaking recommendations for resorts and marinas under lease with the Department of Natural Resources (Department) as contemplated by [IC 14-10-2-0.3](#). The time frames established by this information bulletin are essential to its effective implementation.

2. Rate Establishment and Increase Requests

(A) A lessee shall not impose a fee upon a member of the public for accommodations or lodging; slips or other mooring facilities, including buoys and docking stations; and houseboats, including floating cabins, without first having obtained approval from the Natural Resources Commission (Commission). A lessee shall submit its request for rate establishment and increase to the:

- (i) Division of State Parks
Department of Natural Resources
Indiana Government Center South
402 West Washington Street, Room W298
Indianapolis, IN 46204; and
- (ii) Hearings Division
Natural Resources Commission
Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, IN 46204-2273

in accordance with the existing lease agreement for the following year by January 1 of the preceding year. The lessee shall include justification for the request and the total number of existing renters along with rates from other comparable marinas.

(B) For purposes of this information bulletin, a "comparable marina" is a marina located within four hundred (400) miles of the lessee's marina that maintains facilities and provides amenities similar to the marina for which a rate establishment or increase request has been submitted.

3. Processing Rate Establishment and Increase Requests and Comments

(A) The Hearings Division will assign a cause number and hearing officer. By February 1, the Department shall notify the lessee of the assigned administrative cause number, identity of the hearing officer, and hearing officer's electronic mail address.

(B) By March 1, the lessee shall provide written notice, by personal delivery, U.S. first class mail, or by electronic mail, to each slip renter or buoy renter that the lessee is requesting a rate establishment or increase associated with slips or other mooring facilities, including buoys and docking stations. The notice shall include the proposed rates and advise the renter that a rate hearing will be scheduled only upon submission of requests for rate hearing by ten percent (10%) of the renters within fifteen (15) days to the hearing officer, by personal delivery, U.S. first class mail sent to the address of the Hearings Division as provided in section 2(A)(ii) of this bulletin, or by electronic mail sent to the hearing officer. The lessee shall also provide the renter with the hearing officer's electronic mail address. Not later than March 15, the lessee shall provide the Hearings Division with a copy of the notice and a listing that includes the names of persons notified and the method of service under this paragraph. The lessee shall, by sworn affidavit or affirmation, authenticate the date of mailing and that all addressees were served as indicated in the listing. If the lessee asserts the listing contains trade secrets, the Uniform Trade Secrets Act (IC 24-2-3) applies.

(C) By March 1, the lessee shall post written notice in a conspicuous location at the lessee's business office of a request for rate establishment or increase associated with accommodations, lodging, and houseboats, including floating cabins. The notice shall include the proposed rates and advise the public that a rate hearing will be scheduled only upon submission of twenty-five (25) individual requests for rate hearing to the hearing officer by personal delivery, U.S. first class mail sent to the address of the Hearings Division as provided in section 2(A)(ii) of this bulletin, or by electronic mail sent to the hearing officer not later than March 15. The lessee shall also provide the public with the hearing officer's electronic mail address.

(D) Petitions, requests, documentation, exhibits, and other pertinent materials concerning any rate establishment or increase request shall be made available for the public to review at the lessee's business office, during normal business hours, from March 1 until the date of the rate hearing or a determination is made with

respect to the request, whichever is earlier. A copy will be available for review at the Division of State Parks' address as provided in section 2(A)(i) of this bulletin. The listing of persons notified as required in paragraph (B) is not governed by this paragraph.

(E) In accordance with the existing lease agreements, the Department will analyze comparable marinas to compare rates with those sought by the lessee. Results of that analysis will be presented to the hearing officer not later than March 15. Information used in this analysis will also be available for inspection at the Division of State Parks and Reservoirs office in Indianapolis.

(F) If a sufficient number of requests for rate hearing are received, the hearing officer shall schedule a rate hearing under section 4 of this information bulletin. If a sufficient number of requests for rate hearing are not received no rate hearing will be conducted, but any requests for rate hearing received will be considered as public comments.

(G) For requests for rate increase seeking increases of two percent (2%) or less for which no public hearing is required, the hearing officer, in consultation with the Department, will act as the delegate of the Commission in determining the lessee's request. Serving as the Commission's delegate, the hearing officer shall consider the Department's analysis of comparable marinas to compare rates with those sought by the lessee. A hearing officer may recommend approval of the rate increase, disapproval of the rate increase, or approval of a rate increase in an amount less than requested by the lessee. A hearing officer's recommendation for rate increase shall not be withheld unless the rates proposed exceed the fair market rates charged by operators of other similar privately-owned resort developments comparable to the project in the area.

(H) For requests for rate increase seeking increases of over two percent (2%) for which no public hearing is required, the hearing officer, in consultation with the Department, will prepare a written report to the Commission, which includes written findings and a proposal to the Commission for recommendations to the U.S. Army Corps of Engineers.

4. Public Hearing

If a sufficient number of requests for rate hearing are received, the hearing officer, in consultation with the Department, will select the date, time, and location in Marion County for a rate hearing to be held. The rate hearing will be held in May or June. Not later than April 1, the Department shall advise the lessee of the date, time, and location of the rate hearing. By April 30, the lessee shall provide written notice, by personal delivery, U.S. first class mail, or by electronic mail, to each slip renter or buoy renter of the time, date, and location of the rate hearing. The notice shall also advise the renter of the opportunity to provide written comments to the hearing officer, either by personal delivery, U.S. first class mail sent to the address of the Hearings Division as provided in section 2(A)(ii) of this bulletin, or by electronic mail. The lessee shall also provide the public with the hearing officer's electronic mail address.

Not later than the date of the public hearing, the lessee shall provide the Hearings Division with a copy of the notice and a sworn affidavit or affirmation, authenticating the date and method of service and verifying that all persons identified in the initial notice listing were served. If the lessee asserts the listing contains trade secrets, the Uniform Trade Secrets Act (IC 24-2-3) applies.

Any person may attend the rate hearing and provide oral or written statements or send written comments concerning the rate establishment or increase request. The hearing officer shall conduct the hearing in an orderly and informal manner designed to develop a fair and complete agency record. The administrative orders and procedures act (IC 4-21.5) does not apply, but the Commission delegates authority to the hearing officer under [IC 14-11-1-3](#) to make any reasonable orders to implement this information bulletin.

The lessee's request and any supporting documentation, written comments, the analysis by the Department, and oral and written statements received during the rate hearing form the record upon which the hearing officer shall review the request for rate establishment or increase. Following the completion of the review, the hearing officer shall make a written report to the Commission. The report shall include written findings with respect to the requested rate establishment or increase and a proposal to the Commission for recommendations to the U.S. Army Corps of Engineers.

5. Presentation to the Commission

Except for requests for rate establishment or increase addressed under section 3(G) of this bulletin, the hearing officer shall present the findings and recommendations to the Commission during a meeting to be held in May or July. During that meeting, the Commission shall either recommend approval of the rate establishment or increase, disapproval of the rate establishment or increase, or approval of a rate establishment or increase in an amount less than requested by the lessee.

Recommendation for favorable consideration of a rate establishment or increase shall not be withheld unless, in the opinion of the Commission, the rates proposed exceed the fair market rates charged by operators of other similar privately-owned resort developments comparable to the project in the area.

6. Recommendation by Commission and Final Action by Army Corps

For requests for rate establishment or increase that are required to be presented to the Commission under section 5 of this bulletin, the Commission's secretary shall memorialize the Commission recommendations in writing. Within seven (7) days after the Commission meeting, the Department shall forward the recommendation to the District Engineer of the U.S. Army Corps of Engineers for final action.

7. Setting Interim Rates

The Commission delegates authority to the Division of State Parks and Reservoirs to set interim rates for any fee based item identified in section 2(A) of this bulletin that become available after January 1 due to new construction, modification of existing facilities, or lessee initiatives, such that a rate cannot be established through this process for the year in which the item first becomes available. The lessee may charge the interim rates for only one (1) season.

The lessee shall submit a request for rate establishment in accordance with section 2 of this bulletin before January 1 following the establishment of the interim rate. The hearing officer will process the lessee's request for rate establishment as set forth in sections 3(A) through 3(F), 4, and, as applicable, sections 5 and 6 of this bulletin.

8. Access to Reports and Index of Commission Findings and Recommendations

Upon completion, the hearing officer shall forward a copy of the report of findings and proposal for Commission recommendation to the U.S. Army Corps of Engineers to the lessee, the Department, and any other person who requests a copy.

The Hearings Division is directed to maintain an index on the Commission's website of findings and recommendations made under this information bulletin. To promote equity and consistency, the Department and the Commission may consider these indexed findings and recommendations as precedents. The Commission's findings and recommendations made under this information bulletin after August 1, 2003, are indexed and posted to the Commission's website.

9. History

Information Bulletin #20 was first published in the Indiana Register on May 1, 1998 (21 IR 3209). The Commission amended the policy, Information Bulletin #20 (First Amendment), on May 20, 2003, effective July 1, 2003 (26 IR 3761). On January 13, 2009, the Commission approved Information Bulletin #20 (Second Amendment), ([20090121-IR-312090045NRA](#)). On November 17, 2009, the Commission approved Information Bulletin #20 (Third Amendment), ([20091125-IR-312090919NRA](#)). The third amendment modified the petition submittal date to January 1; allowed notification by email; established a three-tier review process; and made other technical amendments. The fourth amendment ([20170125-IR-312170031NRA](#)) made technical amendments to provide clarity to the petition review process. This fifth amendment updates the contact information for the Commission and its Division of Hearings.

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